

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Mpower Communications Corp.	)	CC Docket No. 01-117
For Establishment of New Flexible Contract	)	
Mechanism Not Subject to "Pick and Choose"	)	DA 01-1348
	)	
	)	

**EX PARTE COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT  
OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. Introduction**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby files these ex parte comments in support of Mpower Communications Corp.'s petition.<sup>1</sup> OPASTCO is a national trade association representing over 500 small telecommunications companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

Approximately one third of OPASTCO's members presently operate competitive local

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<sup>1</sup> *Petition of Mpower Communications Corp. for Establishment of New Flexible Contract Mechanism Not Subject to "Pick and Choose,"* Petition for Forbearance and Rulemaking, CC Docket No. 01-117, DA 01-1348 (fil. May 25, 2001)(Petition).

exchange carriers (CLECs). Typically, these carriers pursue an “edge out” strategy from their incumbent territories into the neighboring rural areas of large incumbent local exchange carriers (ILECs).

## **II. Comments**

OPASTCO’s members have encountered difficulties, from both the ILEC and the CLEC perspective, caused by the Commission’s current rules governing new market entry. Specifically, the Commission’s rules under section 252(i) of the Telecommunications Act of 1996 give rise to two situations: 1) delays induced by large carriers, and 2) the exploitive use of the “pick and choose” rule in high-cost rural markets where cream skimming of high-volume business lines is most damaging to residential consumers. Both scenarios are undesirable. Based upon this first-hand experience, OPASTCO believes that voluntary negotiations leading to a balanced package of components that is suited to the interests of both parties would be far preferable for all involved.

OPASTCO CLECs have seen their attempts to enter new markets impeded by delaying actions taken by the larger incumbent. On the other side of the coin, OPASTCO ILECs have found that the “pick and choose” rule gives them far less flexibility to negotiate reasonable “package deal” agreements that will not cause undue economic burdens to consumers in the long run. Therefore, OPASTCO supports Mpower’s petition to establish a new flexible contract mechanism that is not subject to the “pick and choose” rule.

Absent the “pick and choose” rule, ILECs and CLECs of all sizes will have the ability

to negotiate individual package agreements that are appropriate for their particular circumstances. Participants will be able to strive for an agreement based on the simple concept that a degree of “give and take” is necessary for any negotiation to be successful. The “pick and choose” rule eliminates this basic notion, forcing negotiations to take place in an environment where new entrants can focus on discrete elements of previously negotiated agreements that benefit them (“take” components), without any balancing element (“give” components) that allows the deal to make sense for *both* parties involved. Obviously this environment is not conducive to productive negotiations.

It would be preferable if subsequent new entrants were able to choose between entering into their own voluntary negotiations with the incumbent, or utilizing one of the “package deals” previously negotiated. These negotiated agreements would act in ways similar to a tariff, being publicly available so that subsequent parties interested in penetrating that market could examine them, and determine if the agreement in its entirety will facilitate viable market entry. If a prospective new entrant were to find a previously negotiated agreement unsuitable, the agreement could at least serve as a basis for new negotiations. Because the ILEC and CLEC need not start from “square one,” the negotiating process will be facilitated and will presumably take less time to complete than the initial agreement.

New entrants electing to utilize a previously negotiated agreement would be subject to all of the terms and conditions of the package deal, not just those components that favor them. This would restore balance to the initial negotiations and remove a great deal of the incentive

created by the current rules that cause large carriers to induce delays. Importantly, it would also provide regulatory stability that would allow those who lend to and invest in new entrants to better gauge the potential risks and rewards of penetrating a given market.

The ultimate beneficiary would, of course, be consumers. Customers in rural areas would be at lower risk for upward rate pressure as a result of distortions caused by premature entry and cream skimming. Consumers in larger, more robust markets would benefit from increased competition made possible through rules that do not encourage stalling tactics.

### **III. Conclusion**

For the reasons cited above, and as a representative of both small ILECs and small CLECs, OPASTCO encourages the granting of Mpower's petition.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES**

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